IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 713 OF 1997

Shri Pannalal N. Sisodiya
(since deceased) by L.R.s ... Petitioners
(Ori.Defendants)

V/s

Smt. Kaveri V. Bhalerao ... Respondents
(Ori.Plaintiff)

Shri R.A. Thorat with Vaibhav Sugare for the petitioners.

Shri K.S. Patil for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 18TH APRIL, 2006

ORAL JUDGMENT:

1. Heard learned counsel for both sides. Perused the record.

2. The petitioner tenant has preferred this petition against the judgment and order passed by the Addl. District Judge, Nasik dated 6.11.1996 dismissing the appeal and confirming the judgment and order passed by the Trial Judge decreeing the suit for eviction under

Sec.13(1)(g) of the Bombay Rent Act.

3. The respondent plaintiff filed the suit under Sec. 13(1)(g) of the Bombay Rent Act against the petitioner tenant seeking possession of the suit premises on the ground that it was required for reasonable and bonafide for his own occupation to start the business of cold-drink shop.

4. According to the plaintiff, her husband was retired from S.T. Department and she wanted to start cold-drink shop for which purpose the suit premises was required. It was the case sought to be made out by the plaintiff that the defendants have alternative accommodation for business and, therefore, they did not require the suit premises and hence the suit came to be filed.

The defendants contested the suit inter-alia denying the allegations made by the plaintiffs and sought dismissal of the suit.

5. The learned Trial Judge, after hearing both parties and on the basis of available evidence came to the conclusion that the plaintiff has proved that the suit premises was required bonafide for her own use and

occupation and further held that defendant had another premises available suitable for his business to be run therein. On the ground of hardship it was held that the plaintiff would suffer greater hardship if the decree is refused to be passed than the defendant if the decree is passed and in such manner the suit came to be decreed.

The appeal was carried to the lower appellate Court, who, heard both parties and concurred with the findings recorded by the Trial Court and dismissed the appeal. Hence the present petition.

5. At the outset, it may be noted that it is a case sought to be made out by the plaintiff that her two sons were major but were residing separately and her husband was retired from S.T. Department and they had no other source of income for which purpose they wanted to run a cold-drink shop. The suit premises is located in busy market area and, therefore, the suit premises required to run the said shop. It was also averred that the defendant who was a person of resourses had other business accommodation to shift his business from the suit premises.

6. Both the Courts below have accepted the evidence led

by the plaintiff in order to come to the conclusion that the plaintiff had proved that the suit premises would require bonafide and reasonably for her own use and accommodation to start a shop.

7. On the point of hardship, both the Courts have also held that ti would be the plaintiff who would suffer more hardship than the defendant if the decree is refused to be passed and, as such, that aspect was also held to be in favour of the plaintiff. The learned counsel for the petitioner sought to submit that there was no evidence on record to show that plaintiff had sufficient financial resourses to start a business of cold-drink shop in the said premises. However, in my considered view that aspect is not relevant for any purpose if it is seen and established as in the present case that the need pleaded is reasonable and bonafide. Advocate for the petitioner also sought to put reliance on the judgment of the ?single Judge of this Court in the case of **Narayan Rajaram Alchetty v/s Balamma Bapurao Shrirekam, reported in 2005 (4) Mh.L.J. 538** which is again based upon the judgment of the Apex Court in the case of **Kempaiah v/s Lingaiah, reported in (2001) 8 SCC 718** and other two judgments. Perusal thereof shows that the ratio laid down by the Apex Court is to the effect

that, a reasonable and bonafide requirements is something in between a mere desire or wish on one hand and a compelling or dire or absolute necessity at the other end. It may be a need in present or within reasonable proximity in the future. The use of the word "bonafide" is an additional requirement under Sec. 13(1)(g) and it means that the requirement must also be honest and not be tainted with any oblique motive.

In my view, there cannot be two opinions regarding the ratio laid down by the Apex Court which is referred to by the learned Single Judge of this Court. However, the evidence on record in this case definitely shows that the plaintiff has succeeded in establishing his bonafides and the requirement is also proved to be honest and not tainted with any oblique motive. There is absolutely no evidence on record to show that the demand is malafide or made with oblique motive. There is not even a suggestion to that effect in the course of evidence.

8. Under the circumstances, I do not see any reason why the concurrent findings of both the Courts should be disturbed and hence the petition deserves to be dismissed and stands dismissed with no order as to

costs.

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